

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**



B  
Pgs

# 76-1009

To be argued by  
SHEILA GINSBERG

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

-against-

JOHANNES PRESCOTT,

Appellant.

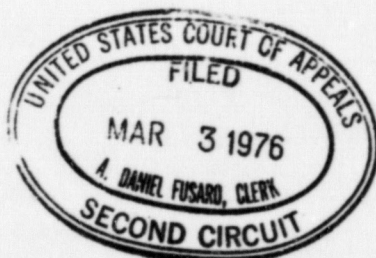
Docket No. 76-1009

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APPENDIX TO APPELLANT'S BRIEF

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ON APPEAL FROM A JUDGMENT  
OF THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK



SHEILA GINSBERG,  
Of Counsel.

WILLIAM J. GALLAGHER, ESQ.,  
THE LEGAL AID SOCIETY,  
Attorney for Appellant  
JOHANNES PRESCOTT  
FEDERAL DEFENDER SERVICES UNIT  
509 United States Court House  
Foley Square  
New York, New York 10007  
(212) 732-2971

CRIMINAL DOCKET  
UNITED STATES DISTRICT COURT

JUDGE MAC MAHON

75 CRIM. 451

D. C. Form No. 100 Rev.

TITLE OF CASE

ATTORNEYS

THE UNITED STATES

For U.S.:

vs.

John Timbers, AUSA  
791-1984

1. JERRY BRAXTON, a/k/a Jerry Wright, a/k/a  
"Robert Jamieson, III. Cts. 1-5

2. JOHANNES PRESCOTT-1, 2, & 3

For Defendant:

(07) STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DIS.
J.S. 2 mailed	Clerk				
J.S. 3 mailed	Marshal				
Violation	Docket fee				
Title 21:846 Consp. to viol. Fed. Narco. Laws. (Ct. 1)					
21:812, 841(a), (1), (b), Distr. & possess. w/intent					
Sex to distr. Cocaine, III. (Cts. 2-4)					
18:924(c)(2) Possess. of firearm dur. commission of felony (Ct. 5)					
18:1202(a)(1) Receipt of firearm by felon. (Ct. 6)					
( Six Counts)					

DATE	PROCEEDINGS
5-6-75	Filed indictment.
5-12-75	Jerry Braxton- No appearance. B/W ordered. Court directs entry of guilty plea. Prescott(atty. present) Pleads not guilty. Motions returnable in 10 days. Bail fixed at \$5,000. P.R.B. co-signed by family. Case assigned to Judge MacMahon for all purposes. Wyatt, J.
5-12-75	Filed Pltff's Notice of Readiness for Trial as soon as the matter can be reached by the Court.
5-27-75	JOHANNES PRESCOTT- Filed Deft's acknowledgement of his constitutional rights.
7-14-75	JERRY BRAXTON- Filed Deft's Notice of Appeal to the U.S.C.A., 2nd Circuit from the Final Judgment dated July 14, 1975. Deft's application to proceed on Appeal in Forma Pauperis is GRANTED. SO ORDERED- MacMAHON, J. (Copy mailed to Deft & U.S.
7-14-75	JOHANNES PRESCOTT- Filed Deft's Notice of Appeal to the U.S.C.A., 2nd Circuit from the Final Judgment dated July 14, 1975. Deft's application to proceed on Appeal in Forma Pauperis is GRANTED. SO ORDERED- MacMAHON, J. (Copy mailed to Deft & A.U.

(Cont'd on Page #2)



DATE	PROCEEDINGS
11-75	JERRY BRAXTON= Filed Judgment and Commitment Order= The Deft is hereby committed to the custody of the Atty General for imprisonment for a period of FIVE (5) YEARS on each of COUNTS 1 & 2 to run concurrently with each other. Pursuant to the provisions of Title 21, Section 841 U.S.C., the Deft is placed on SPECIAL PAROLE for a period of THREE (3) YEARS, to commence upon expiration of confinement. COUNTS 3, 4, & 5 are DISMISSED on motion of Deft's counsel with the consent of the Government. —MacMAHON, J.
11-75	JOHANNES PRESCOTT= Filed Judgment and Commitment Order= The Deft is hereby committed to the custody of the Atty General for imprisonment for a period of FIVE (5) YEARS on COUNT 2. Pursuant to the provisions of Title 21, Section 841, U.S. Code, the Deft is placed on SPECIAL PAROLE for a period of THREE (3) YEARS, to commence upon expiration of confinement. COUNTS 1, 3, and 6 are DISMISSED on motion of Deft's counsel with the consent of the Government. —MacMAHON, J.
18-75	Filed transcript of record of proceedings, dated <i>Jul 14, 1975</i>
18-75	Filed transcript of record of proceedings, dated <i>May 20, 1975</i>
18-75	Filed transcript of record of proceedings, dated <i>May 27, 1975</i>
2-75	JERRY BRAXTON= Filed notice that the original record on appeal has been certified and transmitted to the U.S.C.A. for the 2nd Circuit.
2-75	JOHANNES PRESCOTT= Filed notice that the supplemental record on appeal has been certified and transmitted to the U.S.C.A., for the second circuit.
1-75	JERRY BRAXTON= Mailed original cja Copy #1 to the A.O., Wash., D.C. for payment —MacMAHON, J.
7-75	JOHANNES PRESCOTT= Mailed original CJA Copy #1 to the A.O., Wash., D.C. for payment. —MacMAHON, J.
7-75	JOHANNES PRESCOTT= Filed CJA Appointment of Counsel, Robert Mitchell, 51 Chambers St, NYC 10007 Tel #WO-2-0675.
3-75	JERRY BRAXTON= Filed commitment & entered return, Deft delivered to WARDEN, Fed. DET. HQRTS, N.Y.C. ON 7-14-75
3-75	JOHANNES PRESCOTT= Filed commitment & entered return, Deft delivered to WARDEN, Fed. DET. HQRTS, N.Y.C. ON 7-14-75
2-75	JERRY BRAXTON= Filed commitment & entered return, Deft delivered to Springfield Medical Center at Springfield, Mo., on 8-22-75.
2-75	JOHANNES PRESCOTT= Filed commitment & entered return, Deft delivered to Springfield Medical Center at Springfield, Mo., on 8-22-75.
21-75	JOHANNES PRESCOTT= Filed Deft's affidavit and Notice of Motion for an order pursuant to Rule 35 for a Reduction Sentence.
10-75	JOHANNES PRESCOTT= Filed deft's motion for defts counsel to examine pre-sentence Report.
10-75	JOHANNES PRESCOTT= Filed Memo-End on deft's motion dtd 10-29-75-Motion w/d So Ordered. MacMahon, J.
10-75	JOHANNES PRESCOTT= Filed Order that US Dept of Prob. for the SD of NY permit Sheila Ginsberg, Esq. to examine the pre-sentence invest. report on deft. J. Prescott. ....MacMahon, J.

DATE	PROCEEDINGS
11-12-75	JOHANNES PRESCOTT= Filed MEMO ENDORSEMENT on Deft's Notice of Motion & Affidvt for an order pursuant to Rule 35 for a reduction of Sentence. Motion GRANTED to the extent that the sentence heretofore imposed on Johannes Prescott on July 14, 1975 on Indictment #75 CR 451 is Vacated. -The United States Attorney is hereby directed to produce Deft. Prescott before the undersigned for resentencing, on or before November 25, 1975, at 10:00 A.M.. The presentence report is available for examination by defense Counsel in the Chambers of the undersigned at any convenient time. SO ORDERED—MacMAHON, J. (Copy to Legal Aid)
11-25-75	JERRY BRAXTON= Filed Deft's acknowledgement of his constitutional rights.
11-25-75	JERRY BRAXTON= Filed letter of Edward S. Panzer, Deft's Attorney, dated June 2, 1975 to Judge MacMahon regarding the withdrawal of Deft's plea.
11-19-75	JOHANNES PRESCOTT= Filed Gov't's affidvt of John Timbers for w/h/c — Writ issued, ret. on 11-25-75.
	JOHANNES PRESCOTT= Filed true copy of order from USCA that motion of 10-20-75 to withdraw the appeal for the purpose of filing a Rule 35 motion is granted.....Clerk m/n
11-25-75	JERRY BRAXTON= Filed notice that supplemental record on appeal has been Certified & transmitted to the USCA.
12-5-75	Filed True Copy of Order from USCA that judgment from the USDC is affirmed.....Clerk Judgment Ent. 12-5-75, Clerk. m/n
12-10-75	JOHANNES PRESCOTT=Filed Judgment & Commitment Order. The Def't is committed to the Atty Gen for imprisonment for a period of FIVE (5) YEARS ON COUNT 2. Pursuant to the provisions of Title 21, U.S.C., Sec. 841, the Def't is placed on SPECIAL PAROLE for a period of THREE (3) YEARS, to commence upon expiration of confinement. Counts 1, 3 & 6 of Indictment 75 Cr. 451 were dismissed on motion of Deft's counsel, with the consent of the Gov't, on July 14, 1975.....MAC MAHON, J
12-17-75	JOHANNES PRESCOTT= Filed Endorsement & Order (Attached to CJA Form 21). Def't was resentenced on 12-10-75, upon his plea of guilty to Count 2. Prescott, by his attorney, now applies for a free transcript of the sentencing minutes of that date, for preparation of an appeal. The degree of punishment imposed within the statutory limits is left to the discretion of the judge. The sentence is well within the statutory maximum, & therefore, is not appealable. Accordingly, the application is denied as frivolous.....MAC MAHON, J m/n
12-17-75	JOHANNES PRESCOTT= Filed notice of appeal to the USCA from the Judgment entered 12-10-75. Copy mailed to Sheila Ginsberg, Legal Aid Society, Federal Defenders Services Unit, Rm. 509, U.S. Court House, 40 Foley Square, New York, N.Y. 10007. Copy mailed



DATE

PROCEEDINGS

to Johannes Prescott, % Sheila Ginsberg, Legal Aid Society, Federal  
Defenders Service Unit, Rm 509, 40 Foley Square,  
New York, N.Y. 10007.

A TRUE COPY  
RAYMOND F. BURCHARDT Clerk  
B. M. Deputy Clerk

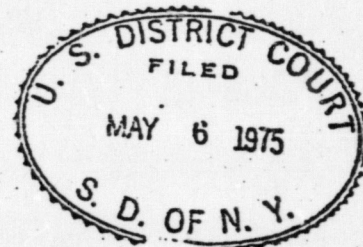
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK-----X  
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UNITED STATES OF AMERICA,  
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JERRY BRAXTON, a/k/a "Jerry Wright,"  
a/k/a "Robert Jamieson, III" and  
JOHANNES PRESCOTT,  
:  
:  
:  
Defendants.  
-----XINDICTMENT

75 Cr.

COUNT ONE

The Grand Jury charges:

1. From on or about the 1st day of July 1974 and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York, JERRY BRAXTON, a/k/a "Jerry Wright," a/k/a "Robert Jamieson, III," and JOHANNES PRESCOTT, the defendants, and Joanne Thomas, named herein as a coconspirator but not as a defendant, and others to the Grand Jury unknown, unlawfully, intentionally and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.
2. It was part of said conspiracy that the said defendants unlawfully, intentionally and knowingly would distribute and possess with intent to distribute Schedule I and II narcotic drug controlled substances the exact amount thereof being to the Grand Jury unknown in violation of Sections 812, 841(a)(1) and 841 (b)(1)(A) of Title 21, United States Code.



MICROFILMED



OVERT ACTS

In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York:

1. In or about July 26, 1974 the defendants JERRY BRAXTON and JOHANNES PRESCOTT met with another person in the vicinity of 81st Street and Amsterdam Avenue, New York, New York.

2. In or about July 28, 1974 the defendants JERRY BRAXTON and JOHANNES PRESCOTT met with another person at Davey's Bar, 81st Street and Amsterdam Avenue, New York, New York.

3. In or about November 12, 1974 the defendant JERRY BRAXTON handed a plastic bag to another person at 111 West 77th Street, New York, New York.

(Title 21, United States Code, Section 846)

COUNT TWO

The Grand Jury further charges:

On or about the 26th day of July 1974 in the Southern District of New York, JERRY BRAXTON, a/k/a "Jerry Wright," a/k/a "Robert Jamieson III," and JOHANNES PRESCOTT, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately 57.50 grams of cocaine hydrochloride.

(Title 21, United States Code, Sections 812, 841 (a)(1) and 841 (b)(1)(A), and Title 18, United States Code, Section 2)

JT:ko

COUNT THREE

The Grand Jury further charges:

On or about the 28th day of July 1974 in the Southern District of New York, JERRY BRAXTON, a/k/a "Jerry Wright," a/k/a "Robert Jamieson, III," and JOHANNES PRESCOTT, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately 24.67 grams of cocaine hydrochloride.

(Title 21, United States Code, Sections 812 841(a)(1) and 841(b)(1)(B), and Title 18, United States Code, Section 2)

COUNT FOUR

The Grand Jury further charges:

On or about the 12th day of November 1974 in the Southern District of New York, JERRY BRAXTON, a/k/a "Jerry Wright," a/k/a "Robert Jamieson III," the defendant, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute, a Schedule II narcotic drug controlled substance, to wit, approximately 47.71 grams of cocaine hydrochloride

(Title 21, United States Code, Sections 812 841(a)(1) and 841(b)(1)(A).

(Title 21, United States Code, Sections 812  
841(a)(1) and 841(b)(1)(A).

COUNT FIVE

The Grand Jury further charges:

On or about the 12th day of November 1974 in the Southern District of New York, JERRY BRAXTON, a/k/a "Jerry Wright," a/k/a "Robert Jamieson, III," the defendant, unlawfully, wilfully and knowingly did carry a firearm, to wit, a .38 caliber Detective Special revolver, serial number C14097, during the commission of a felony for which he may be prosecuted in a court of the United States, to wit the felony alleged in Count Four of this indictment.

(Title 18, United States Code, Section 924(c)(2)).



JT:ko

COUNT SIX

The Grand Jury further charges:

On or about the 3rd day of December 1974 in the Southern District of New York, JOHANNES PRESCOTT, the defendant, being then and there a person who had been convicted on or about February 27, 1973 by a Court of the State of New York, to wit, the New York Supreme Court, New York County, of the felony of possession of dangerous drugs in the fourth degree, unlawfully, wilfully and knowingly did receive and possess in commerce and affecting commerce a firearm, to wit, a .22 caliber RG-14 revolver, serial number 249544.

Anthony Bellaf  
FOREMAN

Paul J. Curran  
PAUL J. CURRAN  
United States Attorney

*Mr. Givens*



**United States District Court**

SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

vs.

JERRY BRAXTON, a/k/a "Jerry Wright", a/k/a "Robert Jamieson, III" and JOHANNES PRESCOTT,

Defendants.

**INDICTMENT**

(18, USC, §§ 2, 924(c)(2) & 1202(a)(1) and 21, USC, §§ 812, 841(a)(1), 841(b)(1)(A) & 846)

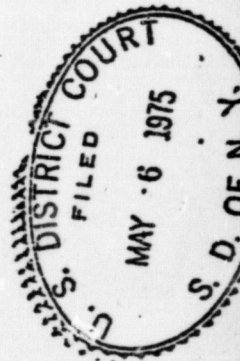
PAUL J. CURRAN

United States Attorney

A TRUE BILL

*Anthony Beel*  
Foreman

FPI-89-1-13-70-30M-4925



5-12-75-

*Def. Jerry Braxton*  
No appearance. D/W ordered. Court directs entry of not guilty plea. Assigned to Judge [unclear] for all purposes.

*Def. Johannes Prescott*  
Atty. Thomas Coxmaning present. Carrying on of [unclear] today.  
Motion Bail Bond [unclear] by Family. AD

*Wiley*

July 14, 1975. Def. Jerry Braxton (2) Sally -

John Timbers (def's ally)

Edward S. Panzer (present)

Def sentenced to 5 years on ct 1, 5 years on ct 2. To commence with next wk. Three years in Special parole.

Counts 3, 4, 5 dismissed. Prescribed

Def Johannes Prescott. Def's ally

Robert Mitchell present. Def sentenced to 5 years on ct 2. Three years in Special Parole. 1st 3rd dismissed. Prescribed. Sentenced to 5 years on ct 2. (no ally)

CERTIFICATE OF SERVICE

March 3, 1976

I certify that a copy of this brief and appendix has been mailed to the United States Attorney for the Southern District of New York.

Sheila J. Dwyer